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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Follow-up progress report on individual communications, adopted by the Committee at its thirteenth session (25 March–17 April 2015)

A. Introduction

1. The present report is prepared in accordance with article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which provides that the Committee shall hold closed meetings when examining communications under the Protocol, and that, after examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner, and with rule 75, paragraph 7, of the Committee's rules of procedure (CRPD/C/1), which states that the Special Rapporteur or working group shall regularly report to the Committee on follow-up activities. The Committee considered and adopted the present report at its thirteenth session.

2. The present report sets out the information received by the Special Rapporteur for follow-up to Views between the Committee's twelfth and thirteenth sessions, from October 2014 to March 2015, and the decisions adopted by the Committee at its thirteenth session. The assessment criteria are as follows:

Assessment criteria	
Action satisfactory	
A	Measures taken largely satisfactory
Action partially satisfactory	
B1	Substantive action taken, but additional information required
B2	Initial action taken, but additional action and information required
Action not satisfactory	
C1	Reply received but action taken do not implement the Views/recommendations
C2	Reply received but not relevant to the Views/recommendations

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Assessment criteria	
No cooperation with the Committee	
D1	No reply to one or more of the recommendations or part of a recommendation
D2	No reply received after reminder(s)
Measures taken are contrary to the recommendations of the Committee	
E	The reply indicates that the measures taken go against the Views/recommendations of the Committee

B. Communications

3. Communication No. 3/2011, *H.M. v. Sweden*

H.M. v. Sweden	**No. 3/2011**
Views:	19 April 2012
First reply from the State party:	Due 19 April 2013; received 26 October 2012; examined at the tenth session (see CRPD/C/10/3)
Authors' comments (first):	1 February 2013 (see CRPD/C/10/3)
Second reply from the State party:	13 December 2013; examined at the eleventh session (see CRPD/C/11/5)
Authors' comments (second):	12 February 2014; examined at the eleventh session (see CRPD/C/11/5)
Meeting with the State party:	1 April 2014
Transmittal of follow-up letter to the State party:	8 May 2014 (see CRPD/C/12/3)
Third reply from the State party:	19 June 2014 (see CRPD/C/12/3)
Transmittal of State party's follow-up observations to the author:	20 June 2014; deadline for author's comments: 4 August 2014

Decision of the plenary (adopted at the twelfth session) and action taken:

The measures adopted by the State party are not satisfactory; follow-up procedure discontinued with a C1 assessment

15 October 2014: Transmittal of letters to the State party and to the author, informing them of the Committee's decision to discontinue the follow-up procedure with a C1 assessment, to be included in the Committee's biannual report to the General Assembly

Author's comments (third): 10 November 2014 (see CRPD/C/12/3)

Summary of author's comments (third):

Given the complexity of her disease, H.M. is unable to make use of the measures proposed by the Swedish social security disability system.

Building permit applications and processes have become substantially more expensive since H.M.'s previous application and the local body in charge of such cases has indicated that it cannot respond positively to the author's application under the current legislation. If the author has to wait until the law is amended, the process would be too long to address the urgent needs of the author.

Since the State party is unwilling to cooperate, the author requests the Committee to ensure that its decision is implemented, including the reimbursement of the medical care costs incurred by H.M. prior to the State party's inability to guarantee her right to equality and reasonable medical care (39,984 kronor).[1]

Action taken:

28 November 2014: Acknowledgment of author's comments

15 January 2015: Transmittal of author's comments to the State party for informational purposes

Recommendation of the Rapporteur:

A letter should be sent to the author informing her that her comments have been transmitted to the State party for informational purposes, and reiterating the Committee's decision to discontinue the follow-up procedure with a C1 assessment, to be included in the Committee's biannual report to the General Assembly

4. Communication No. 1/2010, *Nyusti and Takács v. Hungary*

Nyusti and Takács v. Hungary	**No. 1/2010**
Views:	16 April 2013
First reply from the State party:	Due 24 October 2013; received 13 December 2013: examined at the eleventh session (see CRPD/C/11/5)
Authors' comments (first):	13 March 2014: examined at the eleventh session (see CRPD/C/11/5)

Decision of the Committee (adopted at the eleventh session) and action taken:

Transmittal of follow-up letter to the State party on 8 May 2014 (see CRPD/C/12/3)

Deadline for State party's observations:	7 November 2014

Action taken:

19 January 2015: First reminder sent to State party; deadline: 19 March 2015

15 April 2015: Second reminder sent to State party; deadline: 15 June 2015

Recommendation of the Rapporteur: Follow-up procedure is ongoing

5. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

Bujdosó et al. v. Hungary	**No. 4/2011**
Views:	9 September 2013
First reply from the State party:	26 March 2014 (see CRPD/C/12/3)
Authors' comments (first and second):	5 May 2014 (see CRPD/C/12/3)
Second reply from the State party:	8 July 2014 (see CRPD/C/12/3)

[1] Approximately US$ 4,832. The author provided the Committee with copies of the medical invoices justifying the amount claimed.

Action taken:

Transmittal of State party's follow-up observations to the authors for their comments; deadline: 10 September 2014

24 September 2014: Reminder sent to authors; deadline: 25 November 2014

Authors' comments (third): 6 October 2014

Summary of authors' comments (third):

The authors consider that the State party has only reiterated the information provided in its first follow-up observations. They also indicate as follows:

- On the matter of compensation: During a discussion between a representative of the Ministry of Human Resources and the authors' representatives on 2 October 2014, the authors clarified their position with regard to the compensation for moral damages and legal costs (3,000 Euro per person as compensation for moral damages and 5,000 Euros for legal costs, following the sum awarded by the European Court of Human Rights in a similar case),[2] but the Ministry has not responded to their proposal. They consider that even though the decisions of the European Court are not binding on the Committee, the two bodies should treat like situations alike.

- The authors sent a follow-up letter to the Ministry of Human Resources, reiterating their position and urging it to resolve the amount of the compensation. They requested the Committee to specify to the State party the amount of compensation for moral damages and the sum for legal costs incurred[3] (23,000 Euros in total).

- The State party's argument that the "grievance occurred under a regulation which is no longer in force" should not have any impact on the compensation or its amount. The law reforms referred to only affect the general measures that the Government has to take to comply with the Committee's Views.

- On the general measures: the authors argue that the legislation referred to by the State party was already considered by the Committee and found to be in violation of article 29 of the Convention.[4] The authors consider that the State party is not complying with its obligation if it does not amend the current legislation to ensure that nobody is disenfranchised on the basis of a disability.

- The authors welcome the fact that the State party has published the Committee's Views and a Hungarian translation thereof on the Government website.

Action taken:

7 October 2014: Acknowledgement of authors' comments; transmittal of authors' comments to State party for further information; deadline: 8 December 2014

16 January 2015: First reminder sent to State party; deadline: 16 March 2015

15 April 2015: Second reminder sent to State party; deadline: 15 June 2015

Recommendation of the Rapporteur:

Follow-up procedure is ongoing; decision of the Committee to be adopted upon receipt of State party's observations

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[2] European Court of Human Rights, *Alajos Kiss v. Hungary*, application No. 38832/06, judgement of 20 May 2010.

[3] See Communication No. 4/2011, *Bujdosó et al. v. Hungary*, para. 10 (a).

[4] Ibid., para. 9.4.

6. Communication No. 2/2010, *Gröninger v. Germany*

Gröninger v. Germany	No. 2/2010

Views: 4 April 2014

First reply from the State party: 8 October 2014

Summary of State party's first reply:

Since 12 September 2014, the Committee's decision has been available in an accessible format on the Internet site www.gemainsam-einfach-machen.de.

Regarding the Committee's recommendation that the State party should remedy its failure to fulfil its obligations under the Convention towards the author's son, including by reassessing his case and applying all measures available under domestic legislation in order to effectively promote employment opportunities in the light of the Convention,[5] the State party contests the Committee's decision. It considers that the failure of the author's son to cooperate made it impossible to design and implement further specific and adapted measures. The author's son is now living in France. To claim any support from the German authorities, he would have to transfer his residence to Germany or be available for placement in the German labour market, register again and be willing to cooperate.

As to payment of compensation, the State party considers that there is no any legal foundation, either under the Optional Protocol to the Convention or under the national legislation.

Regarding the recommendation to review the content and functioning of the scheme for the provision of integration subsidies to individuals who are permanently disabled and to ensure that potential employers can effectively benefit from the scheme whenever appropriate,[6] the State party considers that national legislation and practice already provide for a scheme that complies with the Convention. Sections 88 ff, Book III of the Social Code provide that integration subsidies may be granted to employers selecting workers "who are difficult to place for reasons related to their person". Employers receive a wage subsidy to offset the worker's reduced performance in a concrete job. The integration subsidy is therefore a benefit addressed to employers and not to employees. Moreover, it is a discretionary benefit; the employer is not entitled to the support. Support can only be granted if the legal requirements specified in sections 88 ff, Book III of the Social Code are complied with. That is evaluated on a case-by-case basis: the amount of the integration subsidy and its duration are determined for a given job and its demands. A concrete job must therefore be offered and the detailed demands of that job must be identified so that it can be determined whether the employer can have access to the integration subsidies.

At no time has the Brühl Employment Agency received a request for support from an employer concerning the author's son. The employment agency therefore cannot be accused of misconduct in that respect.

The State party disputes the Committee's view that the process for granting the integration subsidy is a deterrent for employers and results in (indirect) discrimination of persons with disabilities. Filing an application is made deliberately easy for employers who just have to fill a form, which is the same for all applications, independent of whether the worker is a person with disability or not. In 2013, integration subsidies were paid in more than 14,000 cases to promote the integration of severely disabled persons. The integration rate for persons with severe disabilities who benefited from integration subsidies is particularly high. In 2012, for example, the integration rate for severely disabled persons who benefited from integration subsidies was 76 per cent (compared to an overall integration rate, including persons without disabilities, of just over 73 per cent).

[5] See Communication No. 2/2010, *Gröninger v. Germany*, para. 7 (a).

[6] Ibid., para. 7 (b).

Those figures show that, contrary to the Committee's findings. integration subsidies also reach severely disabled persons successfully promoting their integration. The existing rules do not result in indirect discrimination of persons with disabilities.

The State party also argues that the scheme is not based on a "medical model of disability"; national legislation does not consider disability as transitional. All employment promotion benefits are aimed at facilitating the integration into the labour market. They are therefore limited in time, regardless of whether they are provided to persons with disabilities, for the period in which it is estimated that the employee's performance will be reduced. The integration subsidy can also be granted for longer periods of up to 96 months in the case of older workers with severe disabilities. But it is definitely not true that all persons with a permanent disability have a permanently reduced performance. The integration subsidy is therefore not usually justified in the long term.

In cases where an employee's performance is permanently below the standard performance of his or her co-workers as a consequence of a severe permanent disability, the integration office may pay a wage-cost subsidy to the employer. In such cases, the employer must file an application for compensation payment to the competent integration office. Subsidies are not terminated or reduced because a disability is considered as "transitional" per se, but because persons with permanent disabilities eventually gain on-the-job work experience and improve their performance.

The State party therefore considers the Committee's two recommendations unjustified and requests the Committee to discontinue the follow-up procedure.

Author's comments (first): 8 December 2014

Summary of the author's comments (first):

The author contests all of the State party's arguments and considers that it fails to recognise that the legislation and the allocation of responsibility for persons with disabilities to different State ministries, together with the discretionary powers of the Employment Agency, lead to systematic discrimination. She further submits that her son is still available for the German labour market as he lives just across the border and could cross the border each day in order to work in Germany if the State party would provide him with the necessary support. Finally, she states that the Employment Agency's refusal to provide her son with the requested support after he completed his vocational training prevented him from accessing any employment.

Action taken:

16 December 2014: Acknowledgement of author's comments; transmittal of author's comments to the State party for further information; deadline: 16 February 2015

10 February 2015: Receipt of further information from the State party, indicating that the author is no longer living in Germany and that if he wishes to be covered by the German system, he should register with one of the employment agencies close to his place of residence, on the German side of the border, so as to receive support

13 February 2015: Acknowledgement of State party's follow-up observations and transmittal of same to the author

5 March 2015: Receipt of comments from the author, who considers that the State party is pretending to provide support and is ignoring the fact that the Employment Agency in Germany is fundamentally not willing to enable persons with disabilities to integrate into the first labour market

Recommendation of the Rapporteur:

A letter should be sent to the State party reiterating the Committee's general recommendations and requesting its observations on the author's comments; follow-up procedure is ongoing

7. Communication No. 8/2012, *Mr. X v. Argentina*

Mr. X v. Argentina	No. 8/2012
Views:	11 April 2014
Author's comments (first):	16 June 2014; transmittal to State party for further information, to be provided together with pending observations; deadline: 15 October 2014
Author's comments (second):	17 November 2014

Summary of the author's comments (first and second):

The counsel for the author indicates that Mr. X had to attend a court hearing in June 2014 that lasted eight to nine hours, in conditions that violated his rights under the Convention. The counsel argues that the measures taken by the State party to enable Mr. X to circulate within the prison and to have access to the toilets and showers are "insufficient and cosmetic". The counsel argues that Mr. X has been transferred to different medical dependencies in the State party in order to have access to the medical treatments he requires and that such transfers are prejudicial for his health. The counsel concludes that the State party continues to violate the Convention.

First reply from the State party: 16 December 2014

Summary of the State party's first reply:

The State party describes the reasonable accommodation measures taken to implement the Committee's recommendations and to adapt the installations of the Ezeiza Prison hospital to the needs of Mr. X, more specifically, replacement of the toilet; reform of the drainpipe; replacement of one of the doors of the infirmary to enable wheelchair access; enlargement of the sidewalk of the courtyard to enable the circulation of a wheelchair.

Regarding medical treatment, the State party recalls the Committee's conclusion that it did "not have sufficient evidence before it to conclude that violations of articles 25 and 26 of the Convention have occurred", nor did it "have sufficient evidence before it to conclude that travel to and from the prison in a highly sophisticated ambulance with a doctor in attendance, or the author's confinement in prison, constitute a violation of article 10 or article 25 of the Convention".[7] The State party therefore concludes that no specific attention is requested by the Committee on this issue.

Author's comments (third): 29 January 2015

Summary of the author's comments (third):

The author considers that:

- The measures taken by the State party are only formal and not sufficient.

- The judge now in charge of the case is not impartial as she was directly involved in the judgement of Mr. X when he was sentenced to prison.

- The medical treatments provided in 2013 required that Mr. X be transferred from the prison to the hospital on a few occasions and those transfers affected his health.

- The authorities continue to violate the rights of Mr. X insofar as he is not given access to adapted medical treatment.

- The modifications of the place of detention, in particular the bathroom, are not sufficient as they do not enable independent access to the facilities; Mr. X must always be accompanied.

[7] See Communication No. 8/2012, *Mr. X v. Argentina*, paras. 8.10 and 8.11.

The counsel for the author also provides details as to Mr. X's health status and the judicial and medical decisions that have been adopted in the last months. She concludes that:

- The measures adopted are not adapted to Mr. X's needs and that he cannot remain in detention because he cannot access the medical treatment he needs in prison;

- House arrest would be the only option for him to be able to have access to the medical treatments he needs.

The counsel reiterates the complaint against Argentina for violation of article 9, para. 1 (a) and (b), article 14, para 2, and articles 10, 17, 25 and 26 of the Convention.

Action taken:

2 February 2015: Acknowledgment of author's comments, informing him that his comments will be examined by the Committee at its next session

13 February 2015: Author's new counsel submits a power of attorney and states that additional comments will be submitted to the Committee

16 February 2015: Acknowledgement of new counsel's letter

15 April 2015: First reminder for additional comments sent to the author; deadline: 15 June 2015

Recommendation of the Rapporteur:

To be decided in the light of the additional comments to be submitted by the author